

Economic Crime and the Substantive and Procedural Criminal Law Issues under an EU perspective: Trends and Developments

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Structure

- Economic Crime in Belgium
 - policy issues
 - substantive criminal law issues
 - procedural criminal law issues
- EU perspective/influence

Policy Issues (1)

- National Forum on Financial, Economic and Social delinquency (1)
 - October 1995: first time
 - April 1997: second time
 - organised by the Criminal Policy Department of the Ministry of Justice
 - with a view to identifying weaknesses and ways to overcome these in a structural way, either through legislative changes or other action as being part of an integrated criminal policy on the matter

Policy Issues (2)

- National Forum on Financial, Economic and Social delinquency (2)
 - a.o. present: Criminal Law Department of the Ministry of Justice, National Tracing Direction of the Department Customs and Excise, Special Tax Inspectorate, Economic Inspectorate, Financial Information Processing Unit, Central Unit for Combating Economic and Financial Delinquency, Commission for Banking and Finance, Insurance Control Department, UCLAF, police (Judicial Police and Gendarmerie), judiciary (public prosecutor's office and investigating magistrates)

Policy Issues (3)

- Federal Action Plan to Combat Organised Crime
 - June 1996
 - covering also organised economic, financial and fiscal crime
- Federal Action Plan to Combat Economic, Financial and Fiscal Delinquency
 - July 1997
 - exclusively dedicated to economic, financial and fiscal crime

Policy Issues (4)

- Federal Security and Detention Plan (1)
 - May 2000
 - reflecting the vision, position and response of the new government -formed following federal elections of June 1999 -with regard to security and detention problems and challenges
 - containing a number of recommendations and policy options with regard to combating economic, financial and fiscal crime

Policy Issues (5)

- Federal Security and Detention Plan (2)
 - already in the coalition agreement of the new government of July 1999, it had been announced that the plan would a.o. focus on improving detection of and reducing white collar crime [...]
 - by international co-operation in the fight against [...] white collar crime and by efficient freezing and seizure of criminal assets

Policy Issues (6)

- Conclusion: Trends and developments
 - joint approach of economic, financial and fiscal crime
 - multi-disciplinary, integrated approach, bringing together different perspectives

Substantive Criminal Law Issues (1)

- no integrated economic criminal law
- system characterized by apparent lack of inconsistency
- Criminal Code - special part
 - provisions on traditional criminal offences: counterfeiting, forgery (in official or business documents), (fraudulent) bankruptcy, misuse of confidence, swindle, fraud, deceit, ...

Substantive Criminal Law Issues (2)

- huge number of specific, separate criminal acts on economic crime
 - number specific criminal acts, in all areas, estimated at 12,000
 - in the area of economic crime: provisions in the context of/with regard to: trade law, corporate law, book-keeping/annual account, financial institutions, banking and business transactions, price setting and regulations, consumer protection, transport, industrial property, intellectual property, (fraudulent) bankruptcy, competition, capital markets, stock exchange, ...
- strong influence from EC regulations/directives

Substantive Criminal Law Issues (3)

- nevertheless:
 - specific characteristics, trends and developments
 - with regard to incriminations
 - with regard to criminal liability
 - with regard to sanctions

Incriminations (1)

- in general: weakening of the legality principle (*nullum crimen sine lege*), by
 - frequent adoption of framework laws ('blank penal legislation'), leaving it to the government to establish punishable behaviour, in terms of constituent elements
 - vague description in the laws of criminal behaviour, leaving (too) much discretion to the judges (it is a criminal offence e.g. to sell goods at prices higher than 'normal' prices)

Incriminations (2)

- marked reinforcement of substantive criminal law provisions on corruption (1)
 - corruption often manifestly linked to organised economic crime phenomena, allowing the criminal entrepreneur or corporation to widen his/its power and impact in the upper world/legal economy
- new bill adopted in February 1999, replacing traditional anti-corruption provisions in the Criminal Code
- introducing new incriminations for: private corruption; attempt to passive corruption

Incriminations (3)

- marked reinforcement of substantive criminal law provisions on corruption (2)
 - raising penalties for distinct forms of corruption
 - introducing the possibility to prosecute foreign and international officials in Belgium
 - changes clearly propelled by developments on the level of the:
 - EU: 1996 'Corruption' Protocol to the PIF Convention; 1997 Anti-corruption Convention
 - OECD: 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
 - CoE: 1999 Criminal Law Convention on Corruption

Incriminations (4)

- marked introduction of substantive criminal law provisions to combat money laundering
 - money laundering often manifestly linked to (organised) economic, financial and fiscal crime
 - 1990: receiving/hiding proceeds of crime incriminated (criminal liability arising as soon as the illegal origin of the assets concerned 'should have been known' to the offender - negligence)
 - 1995: money laundering (transferring proceeds of crime, disguising the illegal origin of proceeds, ...) incriminated as a separate offence (again: negligence sufficient)

Criminal Liability (1)

- weakening of the *nulla poena sine culpa* principle (1)
 - by frequent punishment of negligence instead of intent, as is normally required for traditional 'economic or property' offences in the Criminal Code (counterfeiting, forgery, fraudulent bankruptcy, misuse of confidence, swindle, fraud, deceit, ... generally even requiring *dolus malus*, the fraudulent, deceptive, fallacious, injurious, harmful character of the behaviour concerned being a constituent element of the crimes concerned)

Criminal Liability (2)

- weakening of the *nulla poena sine culpa* principle (2)
 - examples: (supra: receiving/hiding proceeds of crime, money laundering), insider trading, subsidy fraud, selling of hormone-treated cattle, ...
- EU perspective:
 - recommendation 26(b) of the 1997 EU Action Plan to Combat Organised Crime
 - recommendation 17(a) of the EU Strategy on Organised Crime for the Beginning of a New Millennium: '[...]the possibility of extending the criminalization of laundering to cases where the offender ought to have assumed the property in question was the proceeds of crime should be examined'

Criminal Liability (3)

- criminal liability legal persons introduced (1)
 - traditionally: legal or judicial imputing of criminal liability on individual, natural persons behind the legal person or acting on behalf of it
 - 1996 Federal Action Plan to Combat Organised Crime: introduction of criminal liability of legal persons identified as a priority
 - May 1999: concept of criminal liability of legal persons officially recognized in penal law
 - legal persons may commit any offence, provided the incrimination concerned does not preclude it being committed by a legal person

Criminal Liability (4)

- criminal liability legal persons introduced (2)
- provisions on the sanctions that may be imposed to legal persons only in general part Criminal Code
 - conversion of sanctions involving deprivation of liberty into fines, essentially by multiplying the minimum and maximum number of months of imprisonment that natural persons could incur by minimum and maximum values mentioned in the new Criminal Code provisions
 - specific sanctions that may be imposed to legal persons: confiscation of the legal person's assets, mandatory publication of the court decision convicting the legal person, closing of the legal person's premises or branches, prohibition for the legal person to (further) perform certain activities, dissolution of the legal person (equivalent to the 'death penalty' that used to exist for natural persons)

Criminal Liability (3)

- criminal liability legal persons introduced (3)
 - cumulative punishment of legal person and natural person allowed where the legal person is held liable for the fault of an identified natural person who intentionally committed an offence
 - in case of non-intentional fault of an identified natural person: punishment of either the legal or the natural person, depending on which of both has committed the 'most serious fault' (in practice: very difficult weighing exercise)

Sanctions (1)

- possibility to impose types of specific criminal sanctions that cannot be imposed for ordinary criminal offences
- in the case of conviction of natural persons, even before the introduction of criminal liability of legal persons (closing of businesses, prohibition to have certain professional occupations or to run businesses, ...) on the basis of specific criminal provisions
- in the case of conviction of legal persons (supra)

Sanctions (2)

- many economic crimes are punished with administrative sanctions
- major advantage: this type of sanctions could be imposed on corporations and legal persons, which until 1999 could not be held criminally liable

Sanctions (3)

- confiscation (1)
 - in the context of economic crime: often allowed for, even if the assets concerned do not belong to the perpetrator
 - in the context of the proceeds of crime: confiscation of the primary proceeds of crime, of the goods replacing the primary proceeds as well as of the profits from their investment may be confiscated, irrespective of the nature of the predicate offence

Sanctions (4)

- confiscation (2)
 - in the context of receiving/hiding assets and money laundering: all criminal assets that have been received/hidden, that have been transferred or the illegal origin of which has been disguised, may be confiscated, even in the case where the perpetrator of the predicate offence, to whom the assets concerned belong, has not been identified or not been convicted

Procedural Criminal Law Issues

- trends and developments
 - with regard to procedural issues
 - at national level
 - in the context of international co-operation
 - with regard to organisational issues (national level)

Procedural Issues at National Level (1)

- obligation to co-operate with administrative investigations, e.g. by submitting documents which can be self-incriminating
- extended competences for the public prosecutor's office: closing of corporations, house search, permission to sell seized (non-confiscated) goods
- extended possibilities for the public prosecutor's office to propose transactions

Procedural Issues at National Level (2)

- recourse against administrative fines is a mere administrative recourse, not vested with all guarantees that normally apply in penal matters (presumption of innocence, shared burden of proof)
- temporary measures against legal persons in the course of judicial investigations
 - dispensation of dissolution or settlement procedure
 - prohibition of business transactions that might lead to impecuniosity of the legal person
 - payment of a deposit to secure the observance of certain conditions set by the investigating magistrate

Procedural Issues at National Level (3)

- seizure
 - allowed for all presumable criminal assets
 - including immovable goods (official notification is given then to the mortgage registry, in order to inform candidate buyers on the possible illegal origin of these goods; the case being, buyers neglecting this warning can be prosecuted and tried for money laundering)
 - 'value' seizure to be introduced

Procedural Issues at National Level (4)

- shared burden of proof
 - the government has approved a bill on the matter
 - which will be introduced in Parliament later this year
- separating the tracing of criminal assets and the investigation into the predicate offence
 - in order to allowing the tracing to be continued after conviction of the offender for the predicate offence
 - a bill on the matter will most probably be introduced in Parliament later this year

Procedural Issues in the Context of International Co-operation

- entirely new internal, comprehensive legislation with regard to judicial co-operation in criminal matters is being drafted
 - Ghent University entrusted with this scientific task by the Ministry of Justice
 - total abolishment of the fiscal offence exception envisaged (no bank secrecy; only obligation of discretion towards clients)
 - introduction of the possibility to share assets envisaged (EU perspective/influence: recommendation 26(d) of the 1997 Action Plan to Combat Organised Crime and recommendation 21 of the EU Strategy on Organised Crime for the Beginning of a New Millennium)

Organisational Issues (1)

- trend/development towards
 - specialisation
 - establishment of multi-disciplinary, integrated teams

Organisational Issues (2)

- trend/development towards specialisation
 - within the public prosecutor's office
 - within the police
 - administrative units with law enforcement responsibilities, playing a role in combating (organised) economic, financial and/or fiscal crime

Specialisation within the Public Prosecutor's Office (1)

- general characteristics
 - hierarchical body with pyramidal structure
 - holding the monopoly of prosecution
 - discretion whether or not to proceed with a case (expediency)
 - obligation to take account of the lines of criminal policy as identified by the minister of Justice in consultation with the board of prosecutors-general (*infra*)

Specialisation within the Public Prosecutor's Office (2)

- on the level of the correctional tribunals (27)
 - His Majesty's prosecutor, assisted by deputies
 - potential reinforced by attribution of fiscal experts/accountants/economists, some of whom having been given the capacity of officer of judicial police, allowing them to actively co-operate with the police and the judiciary in related criminal investigations (including participation in house searches, seizures, interrogation of witnesses)

Specialisation within the Public Prosecutor's Office (3)

- on the level of the courts of appeal (5)
 - prosecutor-general with the court of appeal, assisted by solicitors-general and deputy prosecutors-general
 - prosecutor-general in charge of all the magistrates of the public prosecutor's office within the territorial jurisdiction of the court of appeal concerned

Specialisation within the Public Prosecutor's Office (4)

- board of prosecutors-general (1)
 - started its activities in the mid-90ies
 - legally institutionalized in 1997
 - national competence, its decisions being binding upon the prosecutors-general with the courts of appeal and all members of the public prosecutor's office within the territorial jurisdiction of the respective courts of appeal

Specialisation within the Public Prosecutor's Office (5)

- board of prosecutors-general (2)
 - as such, a coherent criminal policy for the entire Belgian territory is to be ensured: the board is in charge of implementing the criminal policy guidelines it draws up in co-operation with and under the authority of the minister of Justice, who retains the overall responsibility for the country's criminal policy
 - Mid-1997: government decided to entrust each of the board's members with the task of preparing/defining the lines of criminal policy for a number of specific crimes or offences

Specialisation within the Public Prosecutor's Office (6)

- board of prosecutors-general (3)
 - portfolio prosecutor-general with the court of appeal of Brussels, where the problem of economic, financial and fiscal delinquency is the most serious, includes: financial, economic and commercial law; financial, fiscal and economic crime; environmental crime (e.g. by legal persons); corruption
 - board assisted by 'national magistrates'
 - in the execution of its (policy) tasks, support can be called in of members of 'assisting magistrates'

Specialisation within the Public Prosecutor's Office (7)

- national magistrates (1)
 - function of national magistrate also institutionalized in 1997
 - national jurisdiction
 - task of facilitating international co-operation, inter alia by coordinating or facilitating the execution of letters rogatory
- sort of operational extension of the board of prosecutors-general

Specialisation within the Public Prosecutor's Office (8)

- national magistrates (2)
 - also charged with taking all necessary measures for exercising the right to prosecute, as long as the competent public prosecutor has not been identified or has not exercised his legal competence yet
 - appointment of a specific national magistrate, in charge of the coordination of the international execution of confiscation orders, is envisaged in the new Federal Security and Detention Plan (2000)

Specialisation within the Public Prosecutor's Office (9)

- assisting magistrates (1)
 - mandate: to support and assist the board of prosecutors-general in developing and implementing criminal policy with regard to a specific crime phenomenon in co-operation with the minister of Justice
 - an assisting magistrate has a.o. been appointed in the area of financial, economic and fiscal crime

Specialisation within the Public Prosecutor's Office (10)

- assisting magistrates (2)
 - main tasks: to permanently evaluate the current policy status, to look into the necessity and feasibility of an integrated -multidisciplinary - approach towards the phenomenon, to contribute to the development of specific expertise with the members of the public prosecutor's office in charge of prosecution of the offences concerned, to promote co-operation between the different services involved, if required, and to further coordination and detection in the area concerned

Specialisation within the Police (1)

– general data

- for the time being: three distinct general police forces that carry out investigative tasks: the Gendarmerie, the Municipal Police and the Judicial Police
- at present: police under reform
- future (2001): one integrated police force, structured on two levels (local and federal)
- in the meantime: co-operation and co-ordination between the existing police forces with national jurisdiction regarding judicial policing (Gendarmerie and Judicial Police) must be maximized
- to that end: circular letter issued in February 1997 by the Minister of Justice, introducing a sort of specialization between the Gendarmerie and the Judicial Police in the field of judicial policing

Specialisation within the Police (2)

– Gendarmerie

- must a.o. specialize in the fight against imitations and counterfeiting (of both banknotes and coins)

– Judicial Police

- must a.o. specialize in the fight against: all sorts of financial and economic delinquency, IT crimes, games of chance, misfeasance and abuse of power by officials, money laundering and corruption
- as such: central role in combating economic, financial and fiscal crime
- its General Commissariat comprises in one of its units the Central Unit for Combating Economic and Financial Delinquency and the Central Unit for Combating Corruption

Specialisation within the Police (3)

- Central Unit for Combating Economic and Financial Delinquency
 - exclusively active in the area of organised economic and financial delinquency, economic and financial crimes having a particular potential to disrupt certain economic sectors if showing an organised nature
 - its range of action comprises: money laundering, serious fiscal offences, insider trading and fraud against the EC/EU budget
 - part of the unit's official mission to maintain contacts in this area with the EC (in practice: OLAF) and to provide for support to it whenever requested

Specialisation within the Police (4)

- Central Unit for Combating Corruption
 - range of action includes (supporting) the detection of serious and complex offences against the material or moral interests of the public service, (supporting) the detection of serious and complex offences in the preparation, allotment and execution of public tenders, in the preparation, granting and use of public subsidies and in the conferring of authorizations, permissions, approvals and recognitions
 - jurisdiction for the entire Belgian territory
 - new Federal Security and Detention Plan (2000): unit will be merged into a new federal anti-corruption service

Special Administrative Units with Law Enforcement Responsibilities (1)

- Financial Information Processing Unit (1)
 - EU perspective: 1992 Directive of the EC Council 91/308/EC
 - implemented in the Belgian legal system in 1993, the act concerned imposing on financial institutions and individuals an obligation to report to the so-called Financial Information Processing Unit transactions or situations that are suspected to be connected with or may indicate money laundering activities
 - independant incorporated administrative body that may, after having received a report of suspicious transactions or activities, notify His Majesty's Prosecutor thereof

Special Administrative Units with Law Enforcement Responsibilities (2)

- Financial Information Processing Unit (2)
 - scope of Belgian legislation *ratione materiae* much broader than required by EC Directive 91/308/EC (drug trafficking): money and assets pursuant to the law are illegal when they proceed from a crime having a connection with terrorism, organised crime, drug trafficking, illegal trade in weapons, goods of merchandise, trade in clandestine workers, slave trade, exploitation of prostitution, forbidden use of or trade in hormones, illegal trade in human organs or tissues, fraud adversely affecting the financial interests of the EC, serious and organised tax fraud, bribery of public servants, stock exchange crimes, the illegal attraction of savings, or fraudulent bankruptcy

Special Administrative Units with Law Enforcement Responsibilities (3)

- Financial Information Processing Unit (3)
 - scope *ratione personae* of the obligation to report suspicious transactions and situations to the Unit has been extended from financial institutions only to inter alia process-servers, public notaries, accountants and real estate agencies (initiative to do so taken in 1996, i.e. long before the European Commission came up with a similar proposal in 1999)

Special Administrative Units with Law Enforcement Responsibilities (4)

- Economic Inspectorate
 - separate department within the Ministry of Economic Affairs
 - consisting of a central and regional directions
 - in charge of both administrative and repressive control on the enforcement of economic regulations
 - task: to act as the federal law enforcement unit for economic crimes in all possible sectors, to deal with complaints and to co-operate with the public prosecutor's office

Special Administrative Units with Law Enforcement Responsibilities (5)

- **Department Customs and Excise**
 - fiscal administration lodged within the Ministry of Finance
 - primary mission: to control import, export and transit of goods
 - co-operates with the police services under the supervision of the public prosecutor's office
 - all customs and excise officials/officers have the competence to establish that a criminal (customs and excise) offence has been committed
 - some of them have far-reaching competences in the field of house search and seizure

Special Administrative Units with Law Enforcement Responsibilities (6)

- **Special Tax Inspectorate**
 - falls under the Ministry of Finance
 - consists of a central administration and field (outside) services
 - competent for tracing fiscal fraud within the entire Belgian territory
 - co-operates with the public prosecutor's office

Trend/Development towards Establishment of Multi-Disciplinary, Integrated Teams

- a number of multidisciplinary integrated (inter-departmental) teams have been established in recent years or are about to be set up
 - with a view to adopting a more integrated policy/approach towards specific forms of (organised) economic, financial and/or fiscal crime
 - EU perspective/influence: recommendation 20 of the 1997 EU Action Plan to Combat Organised Crime, urging the member states to set up multidisciplinary teams in the fight against organised crime
- overview of multi-disciplinary, integrated teams

Multi-Disciplinary, Integrated Teams (1)

- Interdepartmental Prevention Unit
 - established in 1996 within the ministry of Agriculture
 - organizing co-operation between the department of Agriculture, the institute for veterinary inspection (which falls under the Public Health department) and the department of Economic Affairs
 - mission is to coordinate preventive action against fraud with regard to expenditures chargeable to the European Agriculture Orientation and Guarantee Fund
 - the guarantee division of this European Fund finances restitutions in the case of export to third countries as well as financial interventions to regularize the markets
 - biggest part of those financial contributions is paid directly by the member states, acting as an interlink between the European Fund and the beneficiary

Multi-Disciplinary, Integrated Teams (2)

- **Multidisciplinary Unit for Combating Meat Fraud**
 - operational unit, meeting on a monthly basis
 - gathering: the assisting magistrate in the area of financial, economic and fiscal crime, the national magistrate if necessary, the assisting magistrate in the area of hormone delinquency or the magistrate dealing with (a) particular case(s), a Gendarmerie officer from the multidisciplinary hormone unit, as well as representatives from a.o. the customs, the VAT department, the Social Inspectorate, the Economic Inspectorate, the Central Unit for Combating Corruption (Judicial Police) and other relevant services, depending on the case(s) concerned

Multi-Disciplinary, Integrated Teams (3)

- **Interdepartmental Unit for Combating Financial, Economic and Fiscal Delinquency (1)**
 - 1997 Federal Action Plan to Combat Economic and Financial Delinquency: called for an analysis of the opportunity to set up an interdepartmental unit for combating financial, economic and fiscal delinquency
 - new Federal Security and Detention Plan (2000)
 - envisages establishment of such a unit at short notice
 - preparations will be made by the assisting magistrate in the area of financial, economic and fiscal crime, under the auspices of the board of prosecutors-general (in particular of the prosecutor-general having financial, economic and fiscal delinquency in his portfolio)

Multi-Disciplinary, Integrated Teams (4)

- Interdepartmental Unit for Combating Financial, Economic and Fiscal Delinquency (2)
 - already in this preparatory stage, close contacts will be established with the departments involved, which eventually will be represented in the unit, i.e. the ministry of Justice, the ministry of Finance and the Special Tax Inspectorate, the Ministry of Economy and the Economic Inspectorate, the Central Unit for Combating Economic and Financial Delinquency (Judicial Police) and the Financial Information Processing Unit

Multi-Disciplinary, Integrated Teams (5)

- Interdepartmental Unit for Combating Financial, Economic and Fiscal Delinquency (3)
 - representatives of the private/business sector will also be involved in the unit's actual activities
 - one of the central aims of setting up the unit: to come to structural measures in the fight against forms of serious fiscal fraud, such as the phenomenon of VAT carousels

An abstract graphic on a dark brown background. It features a series of approximately 10-12 wavy, parallel lines in a slightly lighter brown color. These lines originate from the left side and curve towards the right, creating a sense of movement and depth. The lines are of varying lengths and amplitudes, giving the graphic a dynamic, organic feel.

Discussion - Questions